

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3656 OF 1997

For approval and signature:

Hon'ble Mr.Justice S.K.Keshote

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

CHETAN AMRUTLAL PATEL

VERSUS

STATE OF GUJARAT

Appearance:

MR SV RAJU with MR AY KOGJE for Petitioner

MR MUKESH PATEL for Respondents No.1 & 2

MR NV ANJARIA for Respondent No.3

Coram: MR.JUSTICE S.K. Keshote,J

Date of order:18/03/1999

#. By this Special Civil Application under Article 226 of the Constitution of India, the petitioner prayed for issuance of a Writ of Mandamus or a Writ in the nature of Mandamus and/or any other appropriate Writ, direction or order, directing the respondents, their servants and agents to give admission to the petitioner to the First year M.B.B.S. course in the B.J.Medical College at Ahmedabad by shifting the petitioner from the Medical College at Baroda forthwith.

#. By way of amendment of the Special Civil Application, the petitioner prayed for further reliefs to issue Writ of Mandamus and/or any other Writ, order or direction quashing and setting aside the condition No.1 of the shifting order dated 23.5.97, annexure-D. Second prayer has been made by way of amendment for issuance of a Writ of Mandamus or any other Writ, order or direction directing the respondent No.3 and/or newly added respondent No.4, i.e. Medical Council of India to grant the first term of first M.B.B.S. which the petitioner has successfully passed and to allow to prosecute further studies in continuity thereof.

#. By filing an application for amendment of Special Civil Application, the petitioner prayed for aforesaid two prayers to be incorporated in the Special Civil Application. Though an impression has been given out as if the Medical Council of India has been added as respondent No.4 in the Special Civil Application, but if we go by the contents of the application and the record of this Special Civil Application, I find that the petitioner has not prayed for impleading the Medical Council of India as party to this Special Civil Application nor this Court has directed impleadment of Medical Council of India as party respondent to this Special Civil Application. The Medical Council of India is not a party to this Special Civil Application. The Medical Council of India was not added as a party to this Special Civil Application and therefore there was not any necessity or occasion for this Court to issue notice of this special civil application to the said authority.

#. The facts of this case, in brief, are that the petitioner's result of H.S.C. examination was declared on 8.6.96. The petitioner got 404 marks out of 450 marks in Science subjects. He applied for admission to M.B.B.S. course and his merit number was 268 for

admission to be given to this course by respondent No.2. On the basis of his merit number, the petitioner was given admission in the first year M.B.B.S. course at Medical College, Baroda on 26th November 1996. The petitioner joined the first year of M.B.B.S. at the said college. The learned counsel for the petitioner admitted before this Court that the petitioner had not applied for reassessment of his answer books in the Science subjects.

#. On 5th February 1997, the petitioner filed Special Civil Application Civil Application No.1143 of 1997 for direction to the Board of Secondary Education for reassessment of his marks in Science subjects of H.S.C. examination. This Special Civil Application came to be allowed by this Court on 10th February 1997. The petitioner got three more marks in the Biology in H.S.C. examination. So, he got 407 marks out of 450 marks in Science subjects and accordingly, what the petitioner stated in the Special Civil Application is that his merit number in the merit list prepared for giving admission to the medical colleges should have been 229. On 14th February 1997, the amended marksheet of H.S.C. examination was given to the petitioner by the Board. It is case of the petitioner that at B.J. medical College, Ahmedabad, admission to First Year M.B.B.S. course was given even to those candidates who secured 405 marks out of 450 marks in H.S.C. examination. The petitioner submitted his amended marksheet to the Central Admission Cell of B.J. Medical College on 20th February 1997. The petitioner appears in the first term examination of first year M.B.B.S. on 27th February 1997. On 17th July 1997, the petitioner appeared in the second term examination of the first year M.B.B.S.. On 17th December 1997, the petitioner appeared in the final examination of the first year M.B.B.S.. It is not in dispute that though the petitioner passed in the first term examination in first year M.B.B.S. and second term examination of first year M.B.B.S., he failed in the final examination of first year M.B.B.S., the result of which was declared on 10th February 1998.

#. For his shifting from Medical College, Baroda to B.J. Medical College, Ahmedabad, the petitioner filed this Special Civil Application in this Court on 6th May 1998. This Special Civil Application came to be allowed by this Court on 10th March 1998 and this Court directed the Dean, B.J. Medical College, Ahmedabad, to give admission to the petitioner in second year M.B.B.S. course in case he clears the first year M.B.B.S. examination from the Medical College, Baroda, as a regular student in regular batch and for that purpose, the Dean, Medical College,

Baroda, shall permit the petitioner to leave the said college so as to enable him to join B.J. Medical College, Ahmedabad, in the second year M.B.B.S. course. This court has also directed the Gujarat University to issue necessary eligibility certificate and do all other necessary formalities to see that the petitioner gets admission in second year M.B.B.S. course at B.J. Medical College, Ahmedabad on his passing final examination of the first year M.B.B.S. at the Medical College, Baroda, which is under the M.S. University, Baroda, as a regular student in regular batch.

#. It is unfortunate that the petitioner has got this judgment from this Court by not disclosing the fact, a very important and material fact, that he failed in the final examination of first year M.B.B.S. at Medical College, Baroda, and the result of which has been declared much earlier in point of time to the day on which the judgment aforesaid has been given by this Court in this Special Civil Application. Though he has got that judgment from this Court, but for the reason aforesaid, he could not have been given admission and rightly has not been given admission in the B.J. Medical College, Ahmedabad, in the second year M.B.B.S. in regular batch, he filed Misc. Civil Application No.1363 of 1998 in this Special Civil Application and accordingly, this Court on 28th September 1998, recalled its judgment and now this Special Civil Application Civil Application has come up for hearing before this Court today.

#. This Special Civil Application has been contested by Gujarat University, by filing a detailed reply to the Special Civil Application. However, the other respondents have not filed any reply to the Special Civil Application. The petitioner filed second application for amendment of this Special Civil Application. In this application, first prayer has been made for impleading Medical College, Baroda, as respondent No.4 in this Special Civil Application Application. Further prayer has been made for incorporation two additional prayers in the Special Civil Application. Now the petitioner has come up with the prayer that the respondent be directed to give him admission in the second year Casual Batch of M.B.B.S. in B.J. Medical College, Ahmedabad, by permitting the petitioner to shift from Baroda Medical College, Baroda, to B.J. Medical College, Ahmedabad. Second prayer has been made for direction to the respondent No.4 to give requisite certificates including migration certificate etc. to the petitioner required to be produced at the time of taking admission in the second

year Casual Batch of M.B.B.S. in B.J. Medical College, Ahmedabad.

#. The learned counsel for the petitioner contended that this case is squarely covered by decision of this Court in the case of Aditi Modi, Special Civil Application No.4090 of 1997. It has next been contended that it is a case of mistake of respondent No.2 as a result of which, the petitioner got his admission at Baroda, otherwise, in case, his marks would have been correctly given in H.S.C. examination by virtue of his own merits, he would have got admission at B.J. Medical College, Ahmedabad. It is a case, what the learned counsel for the petitioner contended, of a mistake committed by the Board of Secondary Education that he is suffering this agony, difficulty and hardship to continue at Baroda though at B.J. Medical College, Ahmedabad, he has bright future. In his submission, B.J. Medical College is number one institution in the State of Gujarat and further the petitioner has good chances of getting admission in post graduate course at this college in comparison to his changes in Medical College at Baroda. Lastly, it is contended that it is not the case of migration, as what the University has contended. It is a simple case of correction of mistake by respondent No.2 or a simple transfer of a student from one medical college to another on detection of this mistake.

##. The learned counsel for the Gujarat University strongly opposed this Special Civil Application. It is contended that the judgment of this Court in the case of Aditi Modi (supra) was based on unamended Regulation of Medical Council of India. It has next been contended that it is not the case of mistake of respondent No.2 in giving admission to the petitioner. On the basis of marksheet produced by petitioner, he has been given merit number and accordingly he got his admission at Medical College, Baroda. It is not the mistake of respondents as they have nothing to do with the H.S.C. examination of the petitioner. The petitioner has accepted his admission at Baroda. He has not applied for reassessment of his marks in H.S.C. examination at any point of time to the Board of secondary education. He directly approached to this Court. However, his marks have been increased by three, and as a result thereof, now the petitioner cannot be permitted to take benefit of his shifting from Medical College, Baroda to B.J. Medical College at Ahmedabad. Relying on the Regulation of the Medical Council of India, the learned counsel for the University contended that it is a case of migration and it is only permissible in case the petitioner's case

falls under the Regulation and not otherwise. The petitioner's case does not fall under the Regulation concerned. Moreover, this migration is only permissible with permission of the Medical Council of India but the petitioner has not approached to the Medical Council of India.

##. The learned counsel for the State of Gujarat adopted the arguments made by learned counsel for University. In addition to his arguments, the learned counsel for respondents No.1 and 2 contended that the petitioner has not come up with clean hands before this Court. It is not a case of any mistake of the respondents. Mistake, if any, was there, it was of the Board of Secondary Education and the petitioner has also not care to get it corrected at the earliest. For the mistake of Board of Secondary Education, the petitioner has no right to get himself transferred from the Medical College, Baroda to B.J. Medical College at Ahmedabad.

##. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

##. This Court has decided this matter in favour of petitioner on 10th March 1998 relying on the decision given in Special Civil Application Application No.4090 of 1997. It is also a fact that this Court, at the time of hearing of the Special Civil Application, was not given out that the petitioner has already failed in the final examination of first year M.B.B.S. the result of which has been declared on 10th February 1998. This judgment is clear that only after passing of the final examination of the first year M.B.B.S., the petitioner shall be given admission to the second year M.B.B.S. at B.J. Medical College, Ahmedabad. From the reading of this judgment, I further find that the same has been given after considering the unamended Regulation of Medical Council on the subject. Similar is the case of Aditi Modi. The amendment in Regulation of Medical Council of India was made no doubt after the admission of the petitioner in the first year M.B.B.S. at Baroda and even after filing of this Special Civil Application by him in this Court. The learned counsel for the petitioner, during the course of arguments, contended that unamended Regulation of Medical Council of India is applicable to the present case. It is the contention of the learned counsel for the University that the Regulation of Medical Council of India, as it stood on the day on which the matter of migration of the petitioner from one college to another is to be considered, and not unamended Regulation. He has relied upon decision of Apex Court in the case

reported in AIR 1984 SC 1451. This controversy, as to which Regulation of Medical Council of India, i.e. amended or unamended, shall apply to this case, has been raised by the learned counsel for the parties, but I do not consider it to be appropriate and necessary in this case to decide the same. It is a fact that as per the amended Regulation of Medical Council of India, the petitioner is not eligible for his migration from Medical College, Baroda, to B.J. Medical College, Ahmedabad. Even if it is taken that his case falls under the amended Regulation, such transfer or migration can only be with the permission of the Medical Council of India and not otherwise.

##. It is not correct to contend by learned counsel for the petitioner that it is a case of mistake, in admission of the petitioner to the M.B.B.S. course committed by respondents. The respondents, as stated earlier, are in no way and manner concerned with the H.S.C. examination of the petitioner. His merit number has been given to him by respondent No.2 on the basis of document filed by petitioner and accordingly he was also given admission. The petitioner has also accepted admission in this case at Medical College, Baroda. This cannot be said to be a case by any stretch of imagination, of a mistake of respondents No. 1, 2 or 3. Not only this, the petitioner has also not applied for reassessment of his Science papers of H.S.C. examination. For about more than two months, he has not taken any action in this respect. He filed Special Civil Application Application No.1143 of 1997 in this Court on 5.2.97. The petitioner is studying at Medical College, Baroda for the last more than two years and at this juncture now, coupled with the fact that he has failed in the final examination of first year M.B.B.S., I do not consider it to be appropriate to grant any relief in this case to the petitioner. It is not the case where the because of these three marks in the H.S.C. examination, the petitioner could not get admission to M.B.B.S. course. The petitioner has been given admission in the very course in which he was desirous of admission, but the only thing is the place. So if we go by substance of the matter, no prejudice has been caused to the petitioner even otherwise, from this so-called mistake of the Board of Secondary Education. The fact that the petitioner has got admission in M.B.B.S. course, he has not applied for any reassessment of answer books in Science papers of his H.S.C. examination, he accepted his admission at the Medical College, Baroda, he has not taken any action in the matter for more than two months, conditional decision which has been given in his favour in this writ petition

by this Court has been recalled and that now he is at Medical College at Baroda for last more than two years, it is not a fit case where any relief has to be granted to the petitioner in this case. It is a matter of convenience only at the most now at this stage.

##. There is yet another ground on the basis of which I am satisfied that this is not a fit case where any relief has to be granted to the petitioner by this Court in its extra ordinary equitable jurisdiction. The petitioner has concealed a very important and material fact from this Court, i.e. that he failed in the final examination of first year M.B.B.S. course, result of which examination has been declared on 10.2.98. If we go by this fact and judgment of this Court given in this case on 10th March 1998, I am satisfied that in case this fact would have been brought to notice of the Court this Court would not have granted any relief to the petitioner in this case. The learned counsel for the petitioner has failed to furnish any satisfactory explanation for this suppression of fact. The conduct of the petitioner is equally very relevant and material in a petition which has been filed by him to seek relief from this Court under its extra ordinary equitable jurisdiction.

##. If we go by the judgment of this Court in Aditi Modi's case (supra), this Court has taken view that only in case a candidate passes his final examination in the first year M.B.B.S. course, he can be transferred to other medical college, and that was also the ratio of the judgment of this Court in this very case also earlier. In case this Court would have known the fact that the petitioner has failed in final examination of the first year M.B.B.S. course, no order would have been passed in his favour. Now, when the petitioner has substantially lost his case on his failure in the final examination of the first year M.B.B.S. course, he has taken Somersault and is praying for transfer in the second year M.B.B.S. course in Casual Batch. This prayer also cannot be granted. The petitioner has no indefeasible right of migration or transfer from one medical college to another medical college. This transfer has been taken to be permissible in case where the candidate passes in the final examination of the first year M.B.B.S. course as a regular student and the petitioner has failed to pass the same. Leaving apart all other questions, the present one is not a fit case where any relief of the nature as prayed for in the main petition or by way of first amendment or now by proposed second amendment has to be granted.

##. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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[sunil]